



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Material Handling, Inc.

File: B-255355

Date: February 25, 1994

A. Sid Goss for the protester.
Paul D. Warring, Esq., Department of the Air Force, for the agency.
Katherine I. Riback, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid of "equal" product on brand name or equal invitation for bids is nonresponsive where the descriptive literature submitted with the bid failed to demonstrate the compliance of the "equal" product with the salient characteristics listed in the solicitation, but only stated that unspecified modifications would be made.

DECISION

American Material Handling, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to B. R. Lee Industries, Inc., for a self-propelled asphalt paver under invitation for bids (IFB) No. F49642-93-B-0045, issued on a brand name or equal basis by the Department of the Air Force.

We deny the protest.

The IFB specified the Leeboy Manufacturing Co., Inc. Model 1000B as the brand name product, and listed the salient characteristics that had to be satisfied by any product offered as an equal to the brand name item. The IFB required that a bidder offering an "equal" product (1) meet the salient characteristics specified in the solicitation; (2) identify the brand name and make or model number of the "equal" product; (3) submit descriptive literature, such as cuts, illustrations, drawings or a clear reference to previously furnished descriptive data available to the contracting officer; and (4) clearly describe any planned modification to the offered product to conform to the

salient characteristics by clearly marking up the descriptive material to reflect the change(s). The contracting officer is required to evaluate "equal" products based on the information contained in the bid as reasonably available to the contracting officer to determine whether the product is equal to the brand name product.

Three bids were submitted by the July 19, 1993, bid opening date. American's bid offering the Mauldin Model 690E was low. The agency rejected American's bid as nonresponsive because its descriptive literature failed to show that it was offering an equal product. The bid of the second low bidder was rejected on the same basis. Award was made on August 10 to B. R. Lee Industries, Inc., the third low bidder, which offered the brand name product. American filed an agency-level protest on August 27, which was denied on September 25. This protest followed.

American contends that its offered "equal" product met the required specifications. American argues that it noted on the descriptive literature submitted with its bid that "modifications to meet required spec[ification]s" would be made, and that this was sufficient to show the acceptability of its proposed "equal" product.

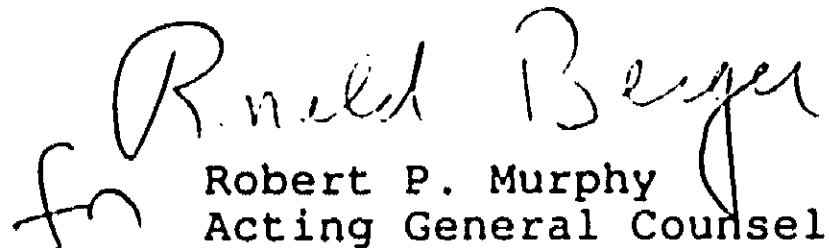
To be responsive to a brand name or equal IFB, bids offering "equal" products must conform to the salient characteristics of the brand name equipment listed in the solicitation. A bidder must submit with its bid sufficient descriptive literature to permit the contracting agency to assess whether the "equal" product meets all the salient characteristics specified in the IFB. Tri Tool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. When the descriptive literature submitted with the bid fails to establish that the products would meet all of the listed solicitation requirements, the bid must be rejected as nonresponsive. AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308.

The Smith-Mauldin literature submitted with American's bid failed, in numerous respects, to show compliance with the salient characteristics listed for the brand name product. For example, the hydraulic system was required to have a reservoir capacity of 40-45 gallons; the American "equal" product showed a capacity of 17-1/2 gallons. In other instances, it was not clear from the descriptive literature whether American's "equal" product met the salient characteristics. For example, the brand name asphalt paver was required to have a track drive capable of paving in low gear at a speed of 0 to 80 feet per minute and taxiing in high gear at a paving speed of 0 to 300 feet per minute, whereas the "equal" product described in the literature submitted with American's bid had a capability in low gear

of a paving speed of 140 feet per minute, with taxiing in high gear at a paving speed of 210 feet per minute listed as an option.

The notation referenced by American on the descriptive literature submitted with American's bid simply stated "with modifications to meet the required spec(ification)s." However, the specific modifications that would be made were not identified or described in any way. Under these circumstances, American's blanket promise of compliance with the specifications was not enough to affirmatively demonstrate the compliance of its product with the specifications. See Trail Equip. Co., B-241004.2, Feb. 1, 1991, 91-1 CPD ¶ 102. While American asserts that the agency should have contacted it if it wanted further details regarding the modifications that would be made to the equal product, such post bid opening contacts to make American's bid responsive would have been improper. Id.

The protest is denied.


Robert P. Murphy
Acting General Counsel